

On July 23, 2008 appellant, then a 58-year-old senior instrument mechanic, filed a claim alleging that he developed renal cell carcinoma in his right kidney as a result of his workplace

exposure to chemicals. The Office accepted his claim for malignant neoplasm, right kidney (renal cell carcinoma). Appellant underwent surgery for right radical nephrectomy, bilateral adrenalectomy and splenectomy.

On September 11, 2009 the Office issue a schedule award for the 100 percent loss of appellant's right kidney. It found he was not entitled to a schedule award for the loss of his adrenal glands or spleen. The period of the award ran from June 14, 2009 to February 21, 2012.

On November 2, 2009 appellant requested reconsideration. He submitted surgical reports and a medical opinion stating that the adrenal gland produces very important life-sustaining hormones. Appellant cited additional authority to support that, without a spleen, he would lose some of the ability to fight infection. He questioned how a second finger is compensable while an adrenal gland is not.

In a decision dated November 20, 2009, the Office denied appellant's request for reconsideration. It found his request provided no relevant evidence or argument not previously considered.

On appeal, appellant argues that the adrenal glands and spleens are important external or internal organs of the body under 5 U.S.C. § 8107(c)(22).

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of the Federal Employees' Compensation Act and the implementing regulations provide for payment of compensation for the permanent loss or loss of use of specified members, functions and organs of the body. No schedule award is payable for a member, function or organ of the body that is not specified in the Act or in the implementing regulations.¹

The Act specifies such members as the arm, leg, hand, foot, thumb, fingers and toes. The Act also specifies loss of hearing and loss of vision, the loss of an eye and serious disfigurement of the face, head or neck.²

Section 8107(c)(22) of the Act provides for payment of compensation for permanent loss or loss of use of "any other important external or internal organ of the body as determined by the Secretary" of Labor.³ Pursuant to such authority, the Secretary has added the following organs to the compensation schedule: breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix and vulva/vagina.⁴

¹ *Thomas E. Montgomery*, 28 ECAB 294 (1977).

² 5 U.S.C. § 8107.

³ *Id.* at § 8107(c)(22).

⁴ 20 C.F.R. § 10.404(a).

ANALYSIS -- ISSUE 1

Neither the Act nor the implementing regulations specify the adrenal glands or spleen as members of the body for which schedule compensation is payable. No employee is entitled to a schedule award for the loss or loss of use of these organs as a matter of law.⁵ In *N.D.*,⁶ the employee similarly sustained impairment to his kidney and argued for expansion of the schedule to include the spleen. The Board noted that the spleen was not a bodily organ specified in the statute or regulations. The Board will therefore affirm the Office's September 11, 2009 decision.⁷

Appellant argues on appeal that the adrenal glands and spleen are "important external or internal organs of the body" under section 8107(c)(22) of the Act. Following that language is an important qualifier: "as determined by the Secretary." The Secretary has not included the adrenal glands or spleen under the authority delegated in the statute.⁸ Moreover, neither the Office nor the Board has the authority to enlarge the terms of the Act or make an award of benefits under any terms other than those so specified in the Act and implementing regulations.⁹ Section 8107(c)(22) provides no statutory basis for the payment of compensation for the loss of those organs.

LEGAL PRECEDENT -- ISSUE 2

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.¹⁰ The employee shall exercise this right through a request to the district Office.¹¹

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously

⁵ E.g., *William Edwin Muir*, 27 ECAB 579 (1976) (spleen and liver).

⁶ 59 ECAB 344 (2008). See also *Thomas E. Stubbs*, 40 ECAB 647 (1989).

⁷ Appellant does not dispute the schedule award he received for the loss of his right kidney. Office regulations specify 156 weeks' compensation for the loss of one kidney, which the Office awarded.

⁸ The Act does not provide for the addition of other important organs on a case-by-case basis. The organs that have been added to the compensation schedule are set forth in implementing regulations. *Ted W. Dietderich*, 40 ECAB 963 (1989) (gallbladder).

⁹ See *W.C.*, 59 ECAB 373 (2008); *Wayne B. Kovacs (Cynthia A. Kovacs)*, 55 ECAB 133 (2003).

¹⁰ 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.605.

considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.¹²

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.¹³ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the request for reconsideration without reopening the case for a review on the merits.¹⁴

ANALYSIS -- ISSUE 2

Following the Office's September 11, 2009 schedule award decision, appellant filed a timely request for reconsideration. His request did not meet any of the standards for obtaining a merit review of his case. Appellant did not show that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit relevant and pertinent new evidence not previously considered by the Office.

Appellant's contention as to whether the adrenal gland produces life-sustaining hormones or whether a spleen helps the body fight infection is not relevant to his entitlement to a schedule award for these bodily members. What is relevant is whether the Act or its regulations specify these organs as compensable under the schedule. Appellant's request for reconsideration does not recognize this point of law.

Because appellant's request did not meet at least one of the standards for obtaining a merit review of his case, the Board will affirm the Office's November 20, 2009 decision.

CONCLUSION

The Board finds that appellant is not entitled to schedule compensation for the loss of the adrenal glands or spleen. The Board further finds that the Office properly denied appellant's request for reconsideration.

¹² *Id.* at § 10.606.

¹³ *Id.* at § 10.607(a).

¹⁴ *Id.* at § 10.608.

ORDER

IT IS HEREBY ORDERED THAT the November 20 and September 11, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board